In the view of the Registrar inasmuch as there are no words of qualification to the opening words of the section, 'The costs of obtaining', therefore, no matter how much the application may be opposed or how long the enquiry may take, yet the total amount recoverable is only five dollars. Mr. Sharma, on the other hand, argued that a petition of course is an *ex parte* application and the applicant is entitled to an order as of course and, being *ex parte* and of course, therefore the fee is fixed at five dollars.

I agree with Mr. Sharma that the section must be intended to cover only *ex parte* applications which are dealt with as such and not matters in which, as here, opposition was made and heard by the Judge. To read the section otherwise would, in my view, create a hardship, and I see no necessity to put a narrow construction upon it.

I, therefore, held that the taxation should continue.

As regards item 8 which was referred to me, if my ruling on the previous point was adverse to the Registrar's opinion, I have not heard Mr. Sharma yet; but subject to anything he may have to say I may say I agree with the ruling of Aitken J. in Perak Civil Suit No. 39 of 1937.

As regards item 8, Mr. Sharma says, as the whole question is now purely academic, he does not wish to argue the point.

[ORIGINAL CIVIL JURISDICTION]

AITKEN, J.

LOOI GUAN KWAY

against

LOW LEAN BOK AND OTHERS

(PERAK CIVIL SUIT No. 39 of 1937)

1932 Rule 4 Sub-rules 49 and 52—Item 86 in Schedule—Fee for instructions in an application in Chambers adjourned into open Court.

No fee "for considering authorities and getting up the case" under item 86 in the Schedule to 1932 Rule 4 is chargeable in the case of an application in Chambers even though adjourned into Court for argument, but an addition to the fees the costs of the existing scale may be allowed in exceptional cases.

Scope of sub-rules *49 and 52 considered.*

M. E. A. Farr for Plaintiff.

S. Seenivasagam for First & Fifth Defendants.

Kit Seng Khong for Second Defendant.

H. Huntsman for Fourth Defendant.

Aitken, J.—The Plaintiff instituted this suit by a plaint which was filed on the 13th of April 1937. On the 15th of November in the same year, after judgment in default against one Defendant had been set aside and a similar judgment against another Defendant had been refused, the Plaintiff took out a Summons in Chambers for leave to make very substantial amendments and additions to his plaint.

This Summons in Chambers was adjourned into Court on the 25th of November, 1937, and argued before me in open Court on the same day. The arguments were lengthy and properly so, and occupied the time of the Court for the whole day. My decision was reserved until the 29th of that month, when I read a written ruling dismissing the application with costs.* At the hearing thereof Mr. Seenivasagam appeared for the 1st and 5th Defendants, Mr. Kit Seng Khong for the 2nd Defendant, & Mr. Huntsman for the 4th Defendant; the Plaintiff was represented by Mr. Briggs and Mr. Farr.

The fate of the Plaintiff's application is still uncertain, as an appeal has been lodged against my refusal of leave to amend; but the Defendants' Solicitors brought in their bills of costs for taxation between party and party before the Assistant Registrar on the 15th of December 1937, and Mr. Farr attended that taxation on behalf of the Plaintiff. Each bill of costs contained an item of $750 for "considering authorities and getting up the case". Mr. Farr objected to these items on the ground that no fee is chargeable "for considering authorities and getting up the case" in respect of an application in chambers, even though adjourned into Court; and the Assistant Registrar has referred this item in each of these Bills of Costs to me for my directions thereon under sub-rule 59 of Rule 4 of 1932.

Sub-rule 59 of Rule No. 4 of 1932 provides as follows:—

> "In all cases for which a fee or costs are not provided in this rule, or where from any exceptional feature the fees or costs allowed are not in judgment of the Registrar sufficient, he may allow such fees or costs, or make such additions to the fees or costs of the existing scale, as the Judge on a reference to him directs."

It will thus be seen that I have to decide, first of all, whether a fee "for considering authorities and getting up the case" is provided for an application in chambers, which is adjourned into Court, by Rule 4 of 1932. If the answer to that question is in the

*Reported in (1938) 7 M.L.J. p. 35.

negative, then it seems to me that I have to decide whether any addition to the fees and costs of the existing scale, and if so what addition, can and should be made in the circumstances of this particular application. The Assistant Registrar is of opinion that no fee for "considering authorities and getting up the case" is chargeable in respect of an application in chambers, even though adjourned into Court; but from the terms of his reference I gather that he thinks that some "addition to the fees or costs of the existing scale" should be made in the circumstances of this particular application.

It is agreed, by every one concerned, that the question as to whether a fee "for considering authorities and getting up the case" is chargeable when an application in chambers is adjourned into Court, turns on the proper construction of item 86 in the Schedule to Rule 4 of 1932. This item reads as follows:—

> "The Registrar may allow a general fee for instructions for trial, for attendances upon witnesses, procuring evidence, considering authorities and getting up the case having regard to all the circumstances. This fee may be allowed in respect of any hearing in open Court whether by reason of a plaint, motion, petition or originating summons or upon an issue."

Mr. Seenivasagam, who bore the brunt of the argument for the Defendants, suggested that the last 4 words of this item "or upon an issue", cover any disputed question of law or fact brought before the Court otherwise than by way of "a plaint, motion, petition or originating summons". He contended that these 4 words are words of amplification and not of limitation, and that as "issue" is nowhere defined in Rule 4, it must be given its ordinary legal meaning and held to include every disputed question of law or fact. (I hope and believe that this is a fair and accurate presentation of Mr. Seenivasagam's argument on the point, with which Mr. Kit Seng Khong and Mr. Huntsman associated themselves, but I must not be understood as reporting word for word what he said).

This argument is ingenious and attractive, and I have decided to reject it only after prolonged consideration. The reasons which have led me to this decision are, shortly, as follows:—

(a) With the possible exception of this item 86 of the Schedule, the provisions of Rule No. 4 of 1932 are definitely opposed to any suggestion that a fee for "considering authorities and getting up the case" is chargeable in respect of an application in chambers.

(b) All the work done in respect of this application now under consideration was done in respect of a chamber matter, and that work did not become any more arduous or difficult from the subsequent fact that it was adjourned into Court for argument.

(c) That adjournment into Court did not alter the nature of the application, which therefore remained an application in chambers for the purposes of taxation.

(d) This Rule No. 4 of 1932 is to be read subject to the Civil Procedure Code—See sub-rule 1 (i) thereof—and the phrase "or upon an issue" at the end of item 86 must, in my opinion, be construed in the light afforded by Chapter XVI of the Code which deals with the "Settlement of Issues". Thus, from S. 165 of the Code it is clear that the trial of the issues of fact in any case may be postponed until an issue of law has been heard and determined; and I think the phrase "or upon an issue", in item 86, must be read as referring to such a hearing and determination.

In view of this decision of mine that no fee "for considering authorities and getting up the case" is chargeable in the case of an application in Chambers, even though adjourned into Court for argument, I must proceed to deal with the other question which arises, and say whether, in the circumstances of this case, any addition to the fees and costs of the existing scale, and if so what addition, can and should be allowed.

If any such addition is to be allowed, it must come under the provisions of either sub-rule 49 or of sub-rule 59 of Rule No. 4 of 1932. I have already set out sub-rule 59 in the 4th paragraph of this ruling, but I think it will make for clarity if I set out both these sub-rules in full at this stage of my ruling. They are as follows:—

> 49. (i) "As to attendances at Chambers, where, from the length of the attendance, or from the difficulty of the case, the Judge or Registrar thinks the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter for laying it before the Judge or Registrar in Chambers on a summons has required skill and labour for which no fee is allowed, the Judge or Registrar may allow, in lieu of the fee provided, such fee not exceeding twenty dollars, or, where the higher scale is applicable, thirty dollars, as in his discretion he thinks fit."

(ii) "Where the preparation of the case or matter for laying before a Judge at Chambers on a summons has required and received from the advocate and solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore appears to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the advocate and solicitor, by a memorandum in writing expressly made for that purpose, and signed by the Judge, specifying distinctly the grounds of such allowance, such fee not exceeding one hundred dollars as in his discretion he thinks fit, instead of the above-mentioned fees."

(59). "In all cases for which a fee or costs are not provided in this rule, or where from any exceptional feature the fees or costs allowed are not in the judgment of the Registrar sufficient, he may allow such fees or costs, or make such additions to the fees or costs of the existing scale, as the Judge on a reference to him directs."

Now it seems to me that sub-rule 49 (i) does not provide for this case because, in my opinion, all the provisions in that sub-rule are governed by the opening words thereof "As to attendances at Chambers". Thus, unless there was, in fact, an attendance in chambers, no addition can be made under (i) of sub-rule 49 to the fee provided for an attendance "on a summons at Judge's chambers" by item 193 in the Schedule.

I am also of opinion that (ii) of sub-rule 49 cannot apply to this case, as however extraordinary may have been the skill and labour devoted by the Defendants' solicitors to the preparation of their resistance to the Plaintiff's efforts to amend his plaint, it cannot be suggested that such skill and labour have conduced "to the satisfactory and speedy disposal of the business".

We come, then, to sub-rule 59, and I have arrived at the conclusion that I can and should make an addition, under this sub-rule, to the fees and costs allowed by the existing scale. The plaintiff's application to amend his plaint, in view of the plaint itself and the nature of those amendments, the time at which his application was filed, and the two attempts to obtain judgment by default which he made in the interim, did raise questions of unusual difficulty which necessitated an extensive consideration of the relevant authorities by the Defendants' solicitors. No fee for such consideration is provided for by Rule 4 of 1932, and the need for an extensive consideration of authorities is certainly an "exceptional feature" in the case of an application to the Judge in chambers.

I therefore direct the Assistant Registrar to allow each of the 3 solicitors, who appeared for the Defendants on the Plaintiff's application to amend his plaint, an additional fee of $100 for his work in considering the authorities and getting up the case.

[ORIGINAL CIVIL JURISDICTION]

ROGER HALL, C.J.

June 4, 1938.

OFFICIAL ADMINISTRATOR, F.M.S., as Administrator of the Estate of CHUA SWEE SIM NEO (f) DECEASED

(Plaintiff)

vs.

STATE OF SELANGOR AND 11 OTHERS

(Defendant).

(SELANGOR ORIGINATING SUMMONS No. 138 of 1937)

Chinese law and custom—Succession—failure of issue—adoption—absence of proof of legality of—bona vacantia.

C.S.S.N., one of the widows of L.B.T. deceased, was entitled to a pecuniary legacy under the will of her late husband. She had no children, but attempted to adopt two children, L.O.T. and L.T.L. She was said to have run away from her home and to have been seen in the street in Singapore. By a judgment in **Lee Seang Neoh v. Low Hin Tuan,** 5 F.M.S. Law Reports, it was presumed on the evidence there adduced that she attained the age of 40 years and so became entitled to be paid the legacy and it was also presumed that she died intestate in or prior to 1925. By the said judgment it was held that L.O.T. and L.T.L. had not been lawfully adopted. Letters of Administration to the estate of C.S.S.N. were granted to the Official Administrator, F.M.S., who was the plaintiff in this case. As a result of the publication of an advertisement for claimants, the State of Selangor and twelve individuals claimed to be entitled to share in the estate of C.S.S.N.

Held, that none of the claimants was entitled under the Chinese law and custom to take in the circumstances alluded to above, and that accordingly the legacy together with accumulations forming the estate of C.S.S.N. was **bona vacantia. (Yap Kon Keow and Another v. Low Hup Neo and Another** 6 F.M.S.L.R. 13 not followed.)

The domicile of the deceased being admittedly Chinese, the Court deferred making an award to the State of Selangor until the Chinese Government should have been heard on the matter, if it so desired.*

ORIGINATING SUMMONS.

Mackie, for the applicant.

Hay, Deputy Legal Adviser, for the State of Selangor Defendant No. 1.

Ramani for Defendants Nos. 2, 3, 4 and 5.

Briggs for Defendants Nos. 6, 7, 8, 9 and 10.

Sen for Defendant No. 12.

The 11th Defendant did not appear although duly served with the proceedings.

*This was brought to the notice of the Government of China which intimated that it did not desire to be heard in this particular case. In this connection **In re Barnett's Trust** (1902) 1 Ch. 847 and **In re Musurus** (1936) All E.R. 1666 are of interest.—(Ed. M.L.J.)